

FILED

MAR 14 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN H. BOSCH,

Defendant - Appellant.

No. 04-35369

D.C. No. CV-03-00297-RHW

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of Washington
Robert H. Whaley, District Judge, Presiding

Submitted March 8, 2006^{**}

Before: CANBY, BEEZER and KOZINSKI, Circuit Judges.

John H. Bosch appeals pro se from the district court's denial of his motion filed under Rule 35(a) of the Federal Rules of Criminal Procedure. The Rule 35(a) motion challenges the sentence imposed following Bosch's conviction for

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

interstate stalking in violation of 18 U.S.C. § 2261A. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

The district court correctly determined that the version of Rule 35 in effect at the time of Bosch's sentencing does not provide a basis for Bosch's constitutional challenge to his conviction and sentence. *See* Fed. R. Crim. P. 35 (2000); *see also United States v. Garcia*, 112 F.3d 395, 397 n.3 (9th Cir. 1997) (recognizing that applicable version of Rule 35 was inappropriate vehicle for challenging sentence because the appeal did not involve correction of sentence on remand or correction of sentence within 7 days).

AFFIRMED.